

May 30, 2019

The Honorable Jesse M. Furman  
United States District Court for the Southern District of New York  
40 Centre Street, Room 2202  
New York, NY 10007

RE: NYIC Plaintiffs' motion to file redacted and sealed materials in *State of New York, et al. v. U.S. Dep't of Commerce, et al.*, 18-CV-2921 (JMF)

Dear Judge Furman:

Pursuant to Rule 7(C)(ii) of this Court's Individual Rules and Practices, NYIC Plaintiffs respectfully request leave to publicly file a redacted version of their letter brief and two accompanying exhibits, filed simultaneously today, seeking an order to show cause whether sanctions or other appropriate relief are warranted. The redacted portions of the letter brief and two accompanying exhibits involve certain deposition testimony of Secretary Ross's expert advisor A. Mark Neuman in this case. At his deposition, Defendants objected on deliberative process grounds to certain testimony by Mr. Neuman concerning his interactions with senior DOJ official John Gore. In light of those objections, the parties agreed at the time not to publicly disclose Mr. Neuman's testimony over which Defendants asserted deliberative-process privilege. Based on the agreement at the time, Defendants may take the position that the testimony at issue should remain under seal.

To be clear, NYIC Plaintiffs oppose any sealing or maintaining of the redactions to the testimony at issue in the letter brief and accompanying exhibits, and we will be filing a motion to unseal such testimony. Because the testimony at issue is demonstrably false and cuts to the heart of the central issues in this case, Defendants will be unable to justify concealing this testimony from public view in light of the presumption favoring public access to judicial documents. *See, e.g., Lugosh v. Pyramid Co. of Onondaga* 435 F.3d 110, 119-20 (2d Cir. 2006).

Respectfully submitted,

ARNOLD & PORTER KAYE SCHOLER LLP  
AMERICAN CIVIL LIBERTIES UNION

By: /s/ John A. Freedman

Dale Ho  
American Civil Liberties Union Foundation  
125 Broad St.  
New York, NY 10004  
(212) 549-2693  
dho@aclu.org

Andrew Bauer  
Arnold & Porter Kaye Scholer LLP  
250 West 55th Street  
New York, NY 10019-9710  
(212) 836-7669  
andrew.bauer@arnoldporter.com

Sarah Brannon<sup>\*\*\*</sup>  
American Civil Liberties Union Foundation  
915 15th Street NW  
Washington, DC 20005-2313  
202-675-2337  
sbrannon@aclu.org

Perry M. Grossman  
New York Civil Liberties Union Foundation  
125 Broad St.  
New York, NY 10004  
(212) 607-3300 601  
pgrossman@nyclu.org

John A. Freedman  
R. Stanton Jones<sup>++</sup>  
David P. Gersch  
Elisabeth S. Theodore<sup>++</sup>  
Daniel F. Jacobson<sup>+</sup>  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Avenue NW  
Washington, DC 20001-3743  
(202) 942-5000  
john.freeman@arnoldporter.com

+ admitted pro hac vice

++ pro hac vice application forthcoming

\*\* Not admitted in D.C.; practice limited pursuant to D.C. App. R. 49(c)(3).

Attorneys for *NYIC* Plaintiffs, 18-CV-5025